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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-22782-rdd

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5 In the Matter of:

6

7 MARK NORDLICHT,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street

14 White Plains, NY 10601

15

16 November 16, 2020

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

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<p>1 HEARING re Motion to Extend Time to File Motion to Dismiss, 2 Object to Discharge, Seek an Exception to Discharge, or 3 Object to Exemptions filed by Kerri A Lyman on behalf of 4 Richard Stadtmauer (ECF #40) 5 6 HEARING re Objection to Motion &amp; Notice of Presentment (Doc 7 No. 46) (related document(s)40) filed by Scott Krinsky on 8 behalf of Mark A Nordlicht (ECF #52) 9 10 HEARING re Reply to Motion In support of Motion for 11 Extension of Time (ECF Nos. 40, 46) (related document(s)40) 12 filed by Kerri A Lyman on behalf of Richard Stadtmauer (ECF 13 #57) 14 15 HEARING re Sur-Reply to Motion and to Reply (Dkt No.'s 40, 16 46, 54 &amp; 57) (related document(s)40) filed by Scott Krinsky 17 on behalf of Mark A Nordlicht (ECF #58) 18 19 20 21 22 23 24 25 Transcribed by: Sonya Ledanski Hyde</p>	<p>1 PROCEEDINGS 2 THE COURT: I'll turn to that one now -- which is 3 In Re Nordlicht. 4 MR. KRITZER: Good morning, Your Honor. Nate 5 Kritzer on behalf of Richard Stadtmauer. 6 THE COURT: Good morning. 7 MR. KRINSKY: Good morning, Your Honor, Scott 8 Krinsky, Backenroth Frankel, on behalf of the Debtor. 9 THE COURT: Good morning. 10 MR. LAMONICA: Good morning, Your Honor. This is 11 Salvatore LaMonica on behalf of the Chapter 7 Trustee. 12 THE COURT: Good morning. 13 MR. TULIS: Your Honor, this is Mark Tulis. I'm 14 the Trustee. 15 THE COURT: Good morning. 16 MR. WEINICK: Good morning, Your Honor. Erik 17 Weinick of Otterbourg PC on behalf of Melanie Cyganowski as 18 the TPCO receiver. 19 MR. BIXTER: Good morning, Your Honor. Richard 20 Bixter on behalf of the PPVA, joint official liquidators. 21 THE COURT: Good morning. Okay, I think that's 22 everyone. Someone should put that on mute. Put your cells 23 on mute. Okay, this is a hearing on a motion by Richard and 24 Merissa Stadtmauer, S-T-A-D-T-M-A-U-E-R, filed October 5, 25 2020 with a notice of presentment filed October 23, 2020 for</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S : 2 3 BACKENROTH FRANKEL &amp; KRINSKY, LLP 4 Attorneys for Debtor 5 800 3rd Avenue 6 New York, NY 10017 7 8 BY: SCOTT KRINSKY (TELEPHONICALLY) 9 10 TULIS WILKES HUFF &amp; GEIGER LLP 11 Attorney for U.S. Trustee 12 220 White Plains Road 13 2nd Floor 14 Tarrytown, NY 10591 15 16 BY: MARK S. TULIS 17 18 OTTERBOURG P.C. 19 Attorney for Melanie L. Cyganowski, as Receiver for 20 Platinum Partners 21 230 Park Avenue 22 New York, NY 10169 23 24 BY: ERIK BRADLEY WEINICK 25</p>	<p>1 extension of time to file motion to dismiss this Chapter 7 2 case, object to discharge under Section 727 with the 3 extension being sought under Bankruptcy Rule 4004, and to 4 seek an exception to discharge -- extension being under Rule 5 4007; the exception being under 523, the specific revisions 6 that require a timely objection. 7 And, finally, an extension of time under Rule 8 4003(b) to object to the Debtor's exemptions. 9 I've reviewed the objection to this motion filed 10 by the Debtor, the reply to that objection filed by the 11 Stadtmauers and the response to that reply. So, you should 12 assume I've been through those documents. 13 Let me ask a couple of questions first. I'm happy 14 to hear oral argument but this is not an evidentiary 15 hearing, although the facts are largely undisputed. My 16 first question is has the 341 meeting ended or does it still 17 continue? 18 MR. KRITZER: Your Honor, this is Nate Kritzer -- 19 I'm sorry, I'll let Mr. Tulis respond. 20 MR. TULIS: Your Honor, this is Mark Tulis. I 21 have continued the 341 meetings. 22 THE COURT: All right. So, I think that probably 23 explains why there's not any opposition to the objection to 24 exemptions -- the extension. Because the 341 hasn't 25 concluded and, therefore, at least based on my reading of</p>

<p style="text-align: right;">Page 6</p> <p>1 the rule, the time to object has been expired.</p> <p>2 I don't know what it's going to adjourn to but the</p> <p>3 focus of the objection is really on the request under Rules</p> <p>4 4004 and 4007 for an extension of the time to object to</p> <p>5 discharge and exception to discharge. Is there any</p> <p>6 opposition to the rest of the motion?</p> <p>7 MR. TULIS: No, Your Honor.</p> <p>8 THE COURT: Okay. All right. So, we're really</p> <p>9 focusing on cause for purposes of 4004 and 4007, which the</p> <p>10 courts have state are to be reviewed under the same legal</p> <p>11 standards.</p> <p>12 So, with that, again, I read the parties'</p> <p>13 pleadings but I'm happy to hear brief oral argument.</p> <p>14 MR. KRITZER: Your Honor, Nate Kritzer, on behalf</p> <p>15 of the Stadtmayers. Keeping in mind Your Honor's comment</p> <p>16 that I'm certain you've read everything, I want to focus on</p> <p>17 just a couple points and, in particular, in responding to</p> <p>18 some of the statements in the supplemental objection filed</p> <p>19 late last night that we, of course, have not yet had an</p> <p>20 opportunity to respond to.</p> <p>21 So, first, of course, the primary basis of our</p> <p>22 motion is the fact that the Debtor did not attend the 341</p> <p>23 meeting scheduled for September 24, 2020. There is not a</p> <p>24 lot of case law that focuses on that situation.</p> <p>25 I think it's -- from my reading of the case law,</p>	<p style="text-align: right;">Page 8</p> <p>1 didn't -- that at that point, we were proposed counsel for</p> <p>2 the Trustee, that they were not part of our overall</p> <p>3 diligence.</p> <p>4 Now, he goes on to say -- the Debtor goes on --</p> <p>5 THE COURT: I'm sorry. You're not counsel to the</p> <p>6 Trustee with regard to 727 matters, though, right?</p> <p>7 MR. KRITZER: That's correct, Your Honor. But we</p> <p>8 were attempting -- and we state this elsewhere in our brief</p> <p>9 -- that the Trustee had stated an overall desire to</p> <p>10 coordinate 2004 discovery so we didn't have five separate</p> <p>11 2004s on the Debtor. And, Your Honor, we were attempting to</p> <p>12 be respectful of that.</p> <p>13 Now, the Debtor goes on to say that the Debtor did</p> <p>14 respond to written questions from the Trustee. What he</p> <p>15 omits to state is that response came after the October 5th</p> <p>16 deadline.</p> <p>17 That response was received, I believe, on October</p> <p>18 16th. And then states the Stadtmayers did not request the</p> <p>19 Debtors provide copies of their responses to the Trustee.</p> <p>20 Now, we did, in fact, obtain those responses from</p> <p>21 the Trustee and I don't agree that they, in fact, responded</p> <p>22 to the questions. But in any event, that came after the</p> <p>23 October 5th initial deadline.</p> <p>24 I also want to respond to the Debtor's statements</p> <p>25 that the Debtor did appear -- this is on page 6 -- they</p>
<p style="text-align: right;">Page 7</p> <p>1 it's pretty rare for a Debtor to actually pose an extension</p> <p>2 when the Debtor has missed a 341 meeting.</p> <p>3 The one case we did find on this is In Re</p> <p>4 Rodriguez 255 B.R. 118, cited in our brief, which states,</p> <p>5 albeit in that case invicta, that the Debtor's nonattendance</p> <p>6 at a Section 341 meeting was in itself cause to grant an</p> <p>7 extension to object to this charge. And that makes perfect</p> <p>8 sense.</p> <p>9 It's actually also cause for much more drastic</p> <p>10 remedies, such as dismissal of the case, as the Court held</p> <p>11 in In Re Burgos and, of course, it frustrates the Creditors'</p> <p>12 ability to do the diligence required to object to this</p> <p>13 charge.</p> <p>14 I want to point out a few points in this</p> <p>15 supplemental objection that I'd like to respond to. On page</p> <p>16 2 of the supplemental objection, the Debtor states that the</p> <p>17 reply states for the first time that the Debtor failed to</p> <p>18 respond to written follow-up questions. And that statement</p> <p>19 is incorrect, because the Stadtmayers failed to provide any</p> <p>20 written questions for the Debtor to respond to. That</p> <p>21 statement is, I would just say, misleading.</p> <p>22 We did ask several questions at the 341 which were</p> <p>23 the subject of follow-up questions by the Trustee. Now, the</p> <p>24 fact that we were not the one that sent them did not mean</p> <p>25 that they were not sent and did not mean that particularly</p>	<p style="text-align: right;">Page 9</p> <p>1 argue that the Debtor did later appear for the subsequently</p> <p>2 adjourned third 341 meeting, which was attended by all other</p> <p>3 Creditors.</p> <p>4 What the Debtor omits to state there is that the</p> <p>5 Debtor flatly refused to answer any of my questions at that</p> <p>6 meeting. There was an outright refusal, there were</p> <p>7 instructions not to answer, and the Debtor completely</p> <p>8 refused.</p> <p>9 Now, I don't know the extent to which that's</p> <p>10 relevant, given that it occurred after November 3rd, but I</p> <p>11 did want to point that out because I do think that the</p> <p>12 Debtor's statement that he's cooperating by attending on</p> <p>13 November 3rd and then refusing to answer our questions</p> <p>14 outright is not -- does not have merit.</p> <p>15 I also want to respond to some statements made on</p> <p>16 page 8 of the brief. First of all, the Debtor argued that</p> <p>17 lack of candor is not a basis for an extension of the</p> <p>18 deadline. We've cited the Strong case, which held</p> <p>19 otherwise. The citation is in our brief. I'm happy to</p> <p>20 provide it if Your Honor needs it, but I'm sure Your Honor</p> <p>21 has it. And also --</p> <p>22 THE COURT: I do have it. I do have it, and I</p> <p>23 believe you miscited it, given that --</p> <p>24 MR. KRITZER: Your Honor, how so?</p> <p>25 THE COURT: It's a local Delaware rule as far as -</p>

<p style="text-align: right;">Page 10</p> <p>1 -</p> <p>2 MR. KRITZER: Well, I'm referring to -- Strong --</p> <p>3 so, I understand with respect to the 341 point, that in that</p> <p>4 case the 341 had not been completed under the local rule. I</p> <p>5 believe that Rodriguez still supports our argument that the</p> <p>6 nonattendance of a 341 is cause for an extension. But I'm</p> <p>7 actually referring to Strong -- we cited it for another</p> <p>8 proposition that the Debtor's lack of candor in the</p> <p>9 proceeding can be cause for an extension. And I don't --</p> <p>10 THE COURT: Let me ask you -- I'm sure you're an</p> <p>11 excellent lawyer, Mr. Kritzer, but how often have you</p> <p>12 attended 341 meetings?</p> <p>13 MR. KRITZER: In all candor, Your Honor, I had not</p> <p>14 attended a 341 meeting before this case.</p> <p>15 THE COURT: Okay. They're not depositions.</p> <p>16 They're an initial dive into the Debtor's financial affairs,</p> <p>17 primarily to give the Trustee further insight and an</p> <p>18 opportunity to ask the Debtor for more information, that</p> <p>19 other parties in interest also can attend.</p> <p>20 Normally, people seek a deep dive with documents</p> <p>21 through Rule 2004, which is broadly worded with relief</p> <p>22 routinely granted, so that they can do that. So, when</p> <p>23 people are talking about failures of candor and courts</p> <p>24 refers to that, what they're normally referring to is either</p> <p>25 one of two things -- either outright lying or misleading the</p>	<p style="text-align: right;">Page 12</p> <p>1 separate 341s. A paragraph 3 of my declaration I explain</p> <p>2 that we followed up with Mr. Tulis regarding that, regarding</p> <p>3 dates for the exam, and that the communication we received</p> <p>4 back suggested that September 24th, the date that had been</p> <p>5 set for the next 341, could be used either as an opportunity</p> <p>6 for that 2004 or as a date to schedule it.</p> <p>7 So, we were trying to comply with the way that the</p> <p>8 Trustee wanted to manage discovery --</p> <p>9 THE COURT: Well, I'm sorry, if it was going to be</p> <p>10 -- if September 24 was going to be the date for the 2004,</p> <p>11 why wasn't one sought then?</p> <p>12 MR. KRITZER: Well, Your Honor, we believed that</p> <p>13 September 24 was likely going to be the date to coordinate a</p> <p>14 further 2004. Because the Trustee wanted to coordinate</p> <p>15 among multiple creditors and have one or two, as opposed to</p> <p>16 five. At that conference, the Debtor did not extend --</p> <p>17 THE COURT: But the deadline to object is October</p> <p>18 5th. So, if you're going to coordinate discovery and you're</p> <p>19 facing a deadline that is 11 days away, then you fall into</p> <p>20 cases like Newinski, which say that that's not enough time.</p> <p>21 MR. KRITZER: Well, Your Honor, there's another</p> <p>22 factor here that I think is worthy of consideration, and</p> <p>23 it's that if the Court looks at the docket, and this is true</p> <p>24 at the time, the docket states and has stated for some time</p> <p>25 that the objection deadline for objections to discharge is</p>
<p style="text-align: right;">Page 11</p> <p>1 Trustee and parties in interest at the 341 or not attending</p> <p>2 it at all; or resisting legitimate discovery requests under</p> <p>3 Rule 2004 and/or being in contempt of a Rule 2004 order.</p> <p>4 Courts won't hesitate in those circumstances,</p> <p>5 including this Court, to grant an extension motion. But</p> <p>6 when there is not an outright lie, when, rather, there's an</p> <p>7 adjourned 341 to ask more questions, and the Creditor</p> <p>8 doesn't take up in any way the opportunity to seek discovery</p> <p>9 under Rule 2004, the courts quite routinely deny motions</p> <p>10 like this. Indeed, they deny them even where the creditor</p> <p>11 did seek Rule 2004 discovery before the period had expired</p> <p>12 but did so with insufficient time to have that discovery</p> <p>13 before the period expired.</p> <p>14 MR. KRITZER: Your Honor --</p> <p>15 THE COURT: (indiscernible) 20 days, or in other</p> <p>16 cases where it's four or seven.</p> <p>17 MR. KRITZER: I understand all that. May I</p> <p>18 respond briefly?</p> <p>19 THE COURT: Well, I'm just dealing with the point</p> <p>20 that says the Debtor was nonresponsive.</p> <p>21 MR. KRITZER: Okay. And, Your Honor, I would --</p> <p>22 so, a couple of points. First, on our seeking in 2004. You</p> <p>23 know, there was a statement by the Trustee at the August</p> <p>24 24th 2341 that he wanted to coordinate the 2004 discovery.</p> <p>25 He did not believe it was fair to the Debtor to have five</p>	<p style="text-align: right;">Page 13</p> <p>1 December 7, 2020.</p> <p>2 Now, I understand under the rules perhaps that's</p> <p>3 incorrect, and I don't purport to tell Your Honor what Your</p> <p>4 Honor meant to rule on the submissions that were submitted</p> <p>5 before. Your Honor knows that part. But I --</p> <p>6 THE COURT: They were stipulations. They're</p> <p>7 stipulations. I just so ordered an agreement that extended</p> <p>8 it for specific people or companies, or legal bodies.</p> <p>9 There's no ruling.</p> <p>10 MR. KRITZER: I understand, Your Honor, but be</p> <p>11 that as it may --</p> <p>12 THE COURT: Well, then why suggest -- you</p> <p>13 wonder... You were suggesting far more than that, sir.</p> <p>14 MR. KRITZER: I'm sorry? I apologize, Your Honor,</p> <p>15 I don't follow.</p> <p>16 THE COURT: You said you didn't purport to know</p> <p>17 what I meant, what I ruled. The ruling was so ordered.</p> <p>18 That was it. And it was a stipulation. So, I think it's</p> <p>19 pretty clear. And you can understand it. And the reason</p> <p>20 I'm somewhat angry is that this is not the first time, or</p> <p>21 the second time, or the third time you have misrepresented</p> <p>22 either the law or the facts in matters before me in this</p> <p>23 case, including sending out subpoenas with no underlying</p> <p>24 proceeding; including in filing a two-page motion that</p> <p>25 doesn't assert any of this stuff for the extension on notice</p>

<p style="text-align: right;">Page 14</p> <p>1 of presentment, which was inappropriate, and in your 2 citation of case law. Perhaps all of that is irrelevant to 3 the underlying request but I'm sick of it. 4 MR. KRITZER: Your Honor, I don't want to get in a 5 fight with Your Honor, certainly. I do take exception to 6 some of those statements, but I don't want to -- I don't 7 want to fight with Your Honor. 8 THE COURT: Do you have anything more to say in 9 support of your motion? 10 MR. KRITZER: Your Honor, if I may just check my 11 notes... I do not at this time, Your Honor. 12 THE COURT: Okay. So, before I hear from Mr. 13 Krinsky, Mr. Tulis, no one has attached, I think, to a 14 pleading on this motion the transcript of the August 341 15 meeting. Is it your belief that at that meeting or even at 16 the September 24th meeting Creditors were lulled into the 17 belief that they would not have to be diligent in pursuing 18 their investigation of the Debtor if they were going to ask 19 for an extension that would be opposed of the time to object 20 to discharge? 21 MR. TULIS: No, Your Honor. I tried to be very 22 careful and put on the record several times that -- again, 23 this is from memory and I apologize -- that everyone has got 24 to protect their own rights, that each creditor has a right 25 to ask questions in a 2004, and that the 341s -- although we</p>	<p style="text-align: right;">Page 16</p> <p>1 it. 2 MR. KRINSKY: Yeah, the 341 on August 24th went 3 for almost 90 minutes. The other Creditors, who I believe 4 are on the line today, Mr. Bixter asked questions on behalf 5 of the PPA -- PPVA parties, and also Mr. Weinick asked 6 questions on behalf of the PPCO parties. 7 Now, there was also then later on, an adjourned 8 341 meeting on November 3rd. Those two creditors who had 9 apparently not appeared on September 24th did appear on that 10 day. They had no further questions. We appeared on that 11 day. And the day before that was -- the Stadtmayers made 12 their voluminous motion for the 2004. So, we didn't think 13 it was proper for them to continue to keep asking questions. 14 The other thing to bear in mind was that, Your 15 Honor, on the 24th, to show that we actually didn't believe 16 it was going forward, we had another matter on with Mr. 17 Tulis, the Lowenthal case, and we did not appear on that 18 either because we believed that they were supposed to go 19 forward with a Zoom link. 20 THE COURT: Okay, so, Mr. Kritzer, on the 24th, is 21 it your recollection that it was just the Trustee and you on 22 behalf of the Stadtmayers? 23 MR. KRITZER: I believe it was the Trustee -- 24 yeah, I believe that's correct. Yes. 25 THE COURT: All right. So, at that point, it was</p>
<p style="text-align: right;">Page 15</p> <p>1 did have a very lengthy one for well over an hour, but that 2 (indiscernible) their own rights and protect their rights. 3 THE COURT: Okay. Who attended the September 24 4 341? Do you remember? 5 MR. TULIS: No. I apologize. Let me look it up. 6 So, September -- no, that was my regular date, Your Honor, 7 so, I'd have to defer to Mr. Krinsky to see if he was there 8 and Mr. Kritzer to see if he was there. But since it was my 9 regular -- I don't believe -- and, again, I apologize -- I 10 don't believe that's the date that -- I have to check with 11 Mr. Krinsky. Is that the date, Mr. Krinsky, that the Debtor 12 did show up or did not? 13 MR. KRINSKY: No, September 24th was the date that 14 we believe was not going forward. According to the 15 transcript, it looked like the only ones that appeared were 16 the Trustee, who was on his general date, and Mr. Kritzer 17 for the Stadtmayers. It did not look, according to the 18 transcript, as if anyone else had appeared. No other 19 creditors. 20 MR. TULIS: And, Your Honor, I just want to 21 clarify. That is my memory. And Mr. Krinsky later 22 apologized. He thought that because he had a very lengthy 23 discussion earlier that month on the record with Mr. 24 Kritzer, myself and I forgot if anyone else asked questions. 25 So, and then we subsequently -- because of that, I adjourned</p>	<p style="text-align: right;">Page 17</p> <p>1 clear, the parties weren't going to be coordinating anything 2 on the 24th? 3 MR. KRITZER: On the 24th, that's correct, because 4 there was no one else on the line. 5 THE COURT: Right. Including other creditor 6 representatives -- the other folks -- 7 MR. KRITZER: I don't recall there being any other 8 Creditors on the line. I do not believe there were other 9 Creditors on the line. 10 THE COURT: Well, there's Ms. Cyganowski's counsel 11 and counsel for the other (indiscernible) -- 12 MR. KRITZER: Oh, on the line today, yes. But I 13 mean -- I was talking about the 24th. I do not believe 14 there was other Creditor counsel online. 15 THE COURT: Okay. All right. So, anyway, I 16 wanted to ask that question and then happy to hear from Mr. 17 Krinsky. 18 MR. KRINSKY: Your Honor, we basically rely on the 19 papers. As Your Honor pointed out earlier, the cases are 20 pretty clear. That even if you seek Rule 2004 a few days 21 prior to the deadline, it's still fatal. Here they did not 22 seek Rule 2004 prior to the October 5th deadline. In fact, 23 they didn't seek Rule 2004 until November 2nd, which was 28 24 days later. In addition to not seeking any Rule 2004 25 discover, they never even contacted us. They never called</p>

<p style="text-align: right;">Page 18</p> <p>1 us, they never emailed us. They only communication we had 2 from them in the entire case was the Zoom link. That's it. 3 The first communication after that that we had 4 from them was on October 5th by Mr. Kritzer's email at 10:42 5 a.m., and, of course, that email as well as the motion 6 contained the incorrect statements that they believed that 7 the deadline was extended somehow to December 7th. And that 8 mistaken belief really sort of colors what happened here. 9 And that's probably why they did not seek any Rule 2004 10 discovery or why they never contacted us, why they never 11 sent us any document requests, information requests, why 12 they never really did anything, Your Honor. That's really 13 all I have. 14 THE COURT: Okay. Anything else under this? 15 MR. KRINSKY: No, Your Honor. 16 THE COURT: Okay. All right. As I noted at the 17 beginning of this hearing, I have before me a motion by the 18 Stadtmauers for an extension of time for four things. Two 19 of those things are not opposed and, frankly, I don't 20 believe there is a deadline that has been missed -- namely, 21 an extension of time to file a motion to dismiss this 22 Chapter 7 case or an extension of time to object to 23 exemptions. 24 What is opposed and where there is applicable 25 deadline that has long since passed is the Stadtmauers'</p>	<p style="text-align: right;">Page 20</p> <p>1 Nowinski 291 B.R. 302 305 (Bankr. S.D.N.Y. 2003). In this 2 district and generally in the circuit, courts are guided by 3 the following five factors in evaluating whether a Movant 4 has established cause for such an extension: first, whether 5 the Creditor has received sufficient notice of the deadline 6 and the information to file an objection. Second, the 7 complexity of the case. Third, whether the Creditor has 8 exercised diligence. Four, whether the Debtor has refused 9 in bad faith to cooperate with the Creditor. And, five, the 10 possibility that proceedings pending in another forum will 11 result in collateral estoppel of the relevant issues. That 12 is the citation to Nowinski. See also In Re Chatkhan 455 13 B.R. 367, In Re Bressler, 2007 Bankruptcy Lexis, 14 (indiscernible) 3 at page 3 (Bankr. S.D.N.Y. Jan. 12, 2017), 15 and the Wellaport Court's opinion in Chua v. Robinson, which 16 appears at 2013 WL 3993741 page 2 (Bankr. S.D.N.Y. Aug. 2, 17 2013). 18 The cases are quite clear that the most decisive 19 factor is the Creditors' diligence. For example, In Re 20 Tatro, 2016 Bankr. Lexis 3898 at pages 6-8, In Re Kramer 492 21 B.R. 366 371 (Bankr. E.D.N.Y. 2013), In Re Chatkhan 455 B.R. 22 365 370 (Bankr. E.D.N.Y. 2011) and numerous other cases. 23 The Creditors' remarkable lack of diligence in 24 prosecuting their case was essentially the only factor and 25 clearly the decisive factor, in any event, taken into</p>
<p style="text-align: right;">Page 19</p> <p>1 request to extend the time under Bankruptcy Rule 4004 to 2 object to the Debtor's discharge, and an extension of time 3 under Bankruptcy Rule 4007 to object to the dischargeability 4 of Debtor's debt to them under those sections of Section 523 5 of the Bankruptcy Code that have a time limitation on a 6 Creditor covered by Rule 4007. 7 Rule 4004(c)(1) provides that a Court must issue a 8 discharge after the expiration of the time fixed to object 9 to the discharge, unless a motion to extend the time for 10 filing a complaint objecting to discharge is pending. See 11 for example, In Re Tatro 2016 Bankr. Lexis 3898 at page 3, 12 (Bankr. W.D.N.Y. Nov. 4, 2016) and the cases cited therein, 13 including In Re Chua or Chua v. Robinson, 2015 U.S. District 14 Lexis 8027 (S.D.N.Y. June 18, 2015). 15 The standard for evaluating a request for an 16 extension of time under both Bankruptcy Rule 4004(b) and 17 Bankruptcy Rule 4007(c) is the same. In Re Chatkhan, 455 18 B.R. 365 357 (Bankr. E.D.N.Y. 2011). Both deadlines can be 19 extended by the Court for cause, as set forth in respective 20 rules, and the determination of whether cause exists to 21 extend the deadlines that rest within the Court's discretion 22 -- provided, of course, that the Movant carries its burden 23 of proof to show cause. 24 As far as the burden of proof is concerned, see In 25 Re Grillo 212 B.R. 744 746 (Bankr. E.D.N.Y. 1997) and In Re</p>	<p style="text-align: right;">Page 21</p> <p>1 account by District Judge Garland in Chua v. Robinson, 2015 2 U.S. District Lexis 80827 at pages 4-5. 3 When referring to diligence, the courts 4 specifically focus on whether the Creditor took sufficient 5 steps to obtain documents and examine the Debtor under 6 Bankruptcy Rule 2004 in sufficient time to get such 7 information before the deadline. See In Re Gotay, 2005 WL 8 3789 30 at page 2, (Bankr. S.D.N.Y. Aug. 30, 2005). 9 "Generally, exercising diligence entails attending the 11 10 USC Section 341(a) meeting and seeking an order to examine 11 or obtain documents from the Debtor, pursuant to Federal 12 Rule Bankruptcy Procedure 2004, and failure to do so will 13 result in a finding that cause does not exist." 14 Citing, in addition to Newinski, In Re Mendelsohn 15 202 Bankr. Reporter 831 832 (Bankr. S.D.N.Y. 1996). See also 16 In Re Grillo 212 B.R. 744 at 747 (Bankr. E.D.N.Y. 1997) 17 where the Court found that cause had not been stablished, 18 where the Creditor had filed a Rule 2004 motion five days 19 before the deadline. Here the Creditor sat on its rights 20 and made no effort to obtain information in such a manner. 21 Here, a requested extension was filed at night on 22 the date, the last date under Rule 4004, October 5, that is. 23 A proper request for discovery under Rule 2004 was not made 24 until November. An improper request for discovery under 25 subpoenas purportedly issued by the Movant was made on</p>

<p style="text-align: right;">Page 22</p> <p>1 October -- after the deadline in October.</p> <p>2 Under those facts alone, the motion should be</p> <p>3 denied. The motion asserts -- well, frankly, the motion</p> <p>4 didn't assert because it was a two-page motion -- but the</p> <p>5 lengthy reply to the Debtor's objection asserts that the</p> <p>6 Creditor was diligent by attending two meetings under 11</p> <p>7 U.S.C. Section 341, the so-called 341 meetings. The first</p> <p>8 of which was quite lengthy as far as such meetings go. I</p> <p>9 believe it's undisputed it was approximately an hour and a</p> <p>10 half. It was attended, of course, by the Trustee, whose</p> <p>11 meeting it actually is, as well as at least three other</p> <p>12 representatives of Creditors, including the Movant. At that</p> <p>13 meeting, the Creditor/Movant asked a number of questions, as</p> <p>14 did well, at least one representative of one of the</p> <p>15 Creditors, and the meeting was not closed. It was adjourned</p> <p>16 roughly a month later until September 24th.</p> <p>17 I believe the record is clear that the Trustee,</p> <p>18 who's an experienced trustee and certainly knows how to warn</p> <p>19 Creditors of their need to protect their own rights, alerted</p> <p>20 the Creditors at the August meeting that they would need to</p> <p>21 protect their own rights in respect of the deadlines facing</p> <p>22 them, including the deadline to object to discharge. And</p> <p>23 that they (indiscernible) their own rights with respect to</p> <p>24 taking discovery under Bankruptcy Rule 2004.</p> <p>25 The Trustee specifically, with the U.S. Trustee</p>	<p style="text-align: right;">Page 24</p> <p>1 to me that the Trustee also alerted the Movants that they</p> <p>2 needed to protect their own rights, and equally</p> <p>3 significantly, but there was no discussion of coordinating</p> <p>4 rule 2004 discovery at the September 24 341 meeting, nor</p> <p>5 could there be since the other two parties, who logically</p> <p>6 would need to be coordinated with, also did not attend that</p> <p>7 meeting.</p> <p>8 It is also clear on this record that, in the words</p> <p>9 of the factors laid out by Newinski, Kramer in the other</p> <p>10 cases, the Debtor here has not, in bad faith, cooperated</p> <p>11 with the Creditor in respect to discovery. At most what</p> <p>12 happened here is that at the original 341 meeting, which,</p> <p>13 again, was quite lengthy, the Debtor answered questions but</p> <p>14 questions were also left unanswered, to be answered in some</p> <p>15 other context later in the case. The Debtor did not oppose</p> <p>16 discovery. In fact, could not have since no discovery was</p> <p>17 sought. It is not alleged that the Debtor failed to attend</p> <p>18 the September 24 meeting in bad faith and, again, discovery</p> <p>19 was not even sought after the 24th but, instead, was sought</p> <p>20 only after the deadline had past.</p> <p>21 While this case may be somewhat more complex than</p> <p>22 most Chapter 7 cases, the Movants here did have a head start</p> <p>23 based on the prepetition litigation that occurred, and did</p> <p>24 not try to build on that head start, as I'd noted, during</p> <p>25 the period before the expiree of the deadline except by</p>
<p style="text-align: right;">Page 23</p> <p>1 and two other parties whose representatives were present at</p> <p>2 the August 341 meeting, obtained a consensual extension of</p> <p>3 the date to object to discharge and with regard to one of</p> <p>4 the other two parties, to object to the dischargeability of</p> <p>5 that claim's debt. The stipulations were so ordered and</p> <p>6 filed on the docket for anyone to see. They extended the</p> <p>7 deadline to the date in December for those specific parties</p> <p>8 and no one else.</p> <p>9 The case law is clear and it clearly stands to</p> <p>10 reason that the Creditor, like the Movant, does not get such</p> <p>11 an extension unless an extension is granted to it, which</p> <p>12 neither of these three extensions did. As the Debtor's</p> <p>13 objection states, a Creditor cannot piggyback on such an</p> <p>14 extension. It can do so only if the extension covers it as</p> <p>15 well. See for example, In Re McCord 184 B.R. 522 (Bankr.</p> <p>16 E.D. Michigan 1995). See also In Re Rivera Lugo 503 B.R.</p> <p>17 1318 (Bankr. D. Puerto Rico 2013) and In Re Butler 94 B.R.</p> <p>18 433 437 (Bankr. N.D. Texas 1989).</p> <p>19 Clearly, the fact that the Debtor agreed to an</p> <p>20 extension with Party X does not serve as cause or force an</p> <p>21 extension on a Debtor for cause by Party Y. Although the</p> <p>22 Movants argue that they believed that the Trustee would be</p> <p>23 coordinating Rule 2004 discovery and would be discussing it</p> <p>24 at the September 24 341 meeting with the Movants and the</p> <p>25 other counsel who had appeared previously, it appears clear</p>	<p style="text-align: right;">Page 25</p> <p>1 asking questions at this first Section 341 meeting. So,</p> <p>2 therefore, the complexity of this case is not a decisive</p> <p>3 factor here, whereas it might have been if discovery had</p> <p>4 actually been commenced and was underway and not completed</p> <p>5 by the deadline.</p> <p>6 Clearly, there was sufficient notice of the</p> <p>7 deadline, which is not disputed. And, finally, there's no</p> <p>8 suggestion that the possibility of proceedings pending in</p> <p>9 another forum will result in collateral estoppel on the</p> <p>10 relevant issues.</p> <p>11 So, weighing all the factors but influenced</p> <p>12 primarily, as I need to be, by the lack of diligence here, I</p> <p>13 will deny the motion. I will repeat or quote a statement</p> <p>14 from Judge Warren from the In Re Tatro case that I</p> <p>15 previously cited, which to me is equally applicable here.</p> <p>16 "The fact that the Debtor may be a bad fellow</p> <p>17 cannot serve as a basis to avoid the limitations period</p> <p>18 under Bankruptcy Rule 4004(c). The limitations period under</p> <p>19 Rule 4007(c) and Rule 4004(a) protects all Debtors,</p> <p>20 anonymous and the infamous alike, by ensuring that</p> <p>21 objections to discharge are brought timely. Those rules</p> <p>22 also allow the Court to protect Creditors by extending their</p> <p>23 time to object to a Debtor's discharge for cause, if</p> <p>24 requested timely.</p> <p>25 "But if there are no objections or the Creditor</p>

<p style="text-align: right;">Page 26</p> <p>1 has not carried its burden of proof, the Court should grant 2 the discharge forthwith. Citing Citibank, N.A. v. Emery, 3 132 F.3d 892 895 (2nd. Cir. 1998); In Re Tatro 2016 Bankr. 4 Lexis at page 8.” 5 So, I’ll ask the Debtor’s counsel to email an 6 order denying the motion -- I’m sorry, the motion’s request 7 for an extension of time under Rules 4007 and 4004 to object 8 -- I’m sorry -- to obtain an exception to discharge and to 9 object to the discharge. 10 As far as the other two request are concerned, the 11 motion is denied as moot without prejudice to make a further 12 objection before the expiration of the applicable time. Any 13 questions? 14 MR. KRINSKY: Your Honor, Scott Krinsky, attorney 15 for the Debtor. Would that then be two separate orders or 16 should -- 17 THE COURT: No, it should be one order since the 18 motion covered all four requests. You could refer to all 19 four requests and then have a single paragraph on each one. 20 MR. KRINSKY: Okay. Thank you. 21 THE COURT: You don’t need to formally settle that 22 order on Mr. Kritzer or anyone else, but you should copy him 23 as well as Mr. LaMonica and Mr. Tulis on the email to 24 chambers. 25 MR. KRITZER: Okay. Your Honor, thank you.</p>	<p style="text-align: right;">Page 28</p> <p>1 CERTIFICATION 2 3 I, Sonya Ledanski Hyde, certified that the foregoing 4 transcript is a true and accurate record of the proceedings. 5 6 7 8 Sonya Ledanski Hyde 9 10 11 12 13 14 15 16 17 18 19 20 Veritext Legal Solutions 21 330 Old Country Road 22 Suite 300 23 Mineola, NY 11501 24 25 Date: December 3, 2020</p>
<p style="text-align: right;">Page 27</p> <p>1 THE COURT: Okay, thank you. 2 MR. KRITZER: Thank you, Your Honor. 3 MR. TULIS: Thank you, Your Honor. 4 THE COURT: Okay. All right. 5 6 (Whereupon these proceedings were concluded at 7 12:18 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	